BEFORE THE
ILLINOIS COMMERCE COMMISSION

DOCKET NO. 03-0596

REBUTTAL TESTIMONY OF

GARY J. BALL

ON BEHALF OF

AT&T COMMUNICATIONS OF ILLINOIS, COVAD COMMUNICATIONS COMPANY, WORLDCOM, INC. D/B/A MCI, ACCESS ONE, INC., CIMCO COMMUNICATIONS, INC., FOCAL COMMUNICATIONS CORPORATION, FORTE COMMUNICATIONS, INC., GLOBALCOM, INC., MPOWER COMMUNICATIONS, XO ILLINOIS, INC., TDS METROCOM, LLC, and MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.

Regarding Dedicated Transport and High Capacity Loops

JOINT CLEC EXHIBIT 2.0

February 4, 2004

03-0596
Joint CLEC 2.0
2/26/04

I. INTRODUCTION OF WITNESS AND PURPOSE OF TESTIMONY.

Q1. *PLEASE STATE YOUR FULL NAME, TITLE AND BUSINESS ADDRESS.*

A1. My name is Gary J. Ball. I am an independent consultant providing analysis of regulatory issues and testimony for telecommunications companies. My business address is 47 Peaceable Street, Ridgefield, Connecticut 06877.

Q2. DID YOU PREVIOUSLY SUBMIT DIRECT TESTIMONY IN THIS PROCEEDING?

A2. Yes, I previously submitted direct testimony on behalf of a number of competitive local exchange carriers ("CLECs") identified in that testimony. A summary of my education background and professional experience is provided in Part I of my direct testimony.

Q3. ON WHOSE BEHALF IS YOUR REBUTTAL TESTIMONY PRESENTED?

A3. I am submitting this rebuttal testimony on behalf of the following CLECs: AT&T Communications of Illinois, Inc, Covad Communications Company, Access One, Inc., CIMCO Communications, Inc., Focal Communications Corporation, Forte Communications, Inc., Globalcom, Inc., Mpower Communications, XO Illinois, Inc., TDS Metrocom, LLC, McLeodUSA Telecommunications Services, Inc. and WorldCom, Inc. d/b/a MCI. These are the same CLECs on whose behalf I submitted direct testimony.

Q4. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A4. The purpose of my rebuttal testimony is to respond to a number of points raised in the direct testimonies of Illinois Commerce Commission Staff witnesses Qin Liu and Genio Staranczak with respect to their review of SBC's requests for non-impairment findings for various dedicated transport routes and enterprise customer locations.

Q5. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?

A5. My rebuttal testimony is divided into six sections. Section I identifies the general scope and purpose of my rebuttal testimony. In Section II, I will explain the importance of ensuring that the burden of proof for both the self-provisioning trigger and wholesale trigger for both dedicated transport and enterprise customer loops is met by SBC, and how the Staff approaches to both the triggers and the potential deployment analysis inappropriately shift the burden to CLECs, who would be placed in the impossible position of having to disprove the existence of other carriers' services or facilities. In Section III, I will explain how Dr. Liu's proposal to allow SBC to include switched transport routes in determining whether the triggers for dedicated transport have been met is erroneous and inconsistent with the FCC's definition of dedicated transport in the Triennial Review Order ("TRO"). I will also provide a more thorough explanation of the differences between dedicated transport and switched transport. In Section IV, I will explain how the FCC's impairment analysis in the TRO requires that OC(n) level services be treated as distinct services from DS3, DS1, and dark fiber, and that the basis of the FCC's impairment analysis would be undermined if OC(n) level services were assumed to provide DS3s and DS1s. In Section V, I will explain how CLECs must have access to an entire building before the self-provisioning trigger for enterprise loops can be met with respect to that building. Finally, in Section VI, I will explain how Dr. Staranczak's proposed modification of SBC's potential deployment analysis for enterprise loops does not cure the fundamental flaw inherent in that analysis; namely, that it does not require the necessary building-specific analysis required by the FCC.

II. THE STAFF APPROACHES TO THE TRIGGERS WOULD INAPPROPRIATELY SHIFT THE BURDEN OF PROOF AWAY FROM SBC AND ONTO THE CLECS.

Q6. ON PAGE 23 OF HER TESTIMONY ON LOOPS, STAFF WITNESS DR. QIN LIU RECOMMENDS A "PROVISIONAL" FINDING OF NON-IMPAIRMENT WITH RESPECT TO 122 LOOP LOCATIONS WHERE SBC HAS ASSUMED THE PRESENCE OF DARK FIBER FROM THE EXISTENCE OF FIBER FACILITIES, LEAVING IT TO CLECS TO COME FORWARD WITH EVIDENCE TO PROVE OTHERWISE. DO YOU AGREE WITH THIS APPROACH?

A6. No. Dr. Liu refers to SBC's "assumption" that the existence of fiber facilities implies that dark fiber is deployed, an assumption which she views as "reasonable," and on that basis would require affirmative evidence from CLECs of the negative – that dark fiber is not present. A similar suggestion is made by Staff witness Dr. Staranczak at pages 16-17 of his testimony where he indicates that 100 buildings from SBC's "potential deployment" list should receive non-impairment findings unless CLECs can provide specific information about any of these buildings to show that the FCC's criteria for potential deployment are not met. In my view, these recommendations are directly contrary to the TRO in that they would allow SBC to rely on presumptions rather than evidence and would effectively shift the burden of showing non-impairment away from the ILEC.

Q7. PLEASE DESCRIBE WHY IT IS NECESSARY FOR SBC TO BEAR THE BURDEN OF PROOF TO DEMONSTRATE THAT THE TRIGGERS HAVE BEEN MET TO SUPPORT A FINDING OF NON-IMPAIRMENT WITH RESPECT TO DEDICATED TRANSPORT ROUTES AND ENTERPRISE CUSTOMER LOOPS?

A7. It is important to remember that the starting point for this proceeding is the FCC's national finding of impairment for loops and dedicated transport at the DS3, DS1, and dark fiber capacity levels. The FCC has given ILECs the opportunity to propose specific locations and routes for which the ILEC believes sufficient services are being offered or

provided by CLECs or other carriers such that CLECs will not be impaired at the requisite capacity levels if the ILEC is not required to offer loops or transport as a UNE at those locations or on those routes. SBC has taken this opportunity, claiming that a large number of buildings and dedicated transport routes in Illinois meet either the triggers or the potential deployment criteria. As the entity seeking to obtain findings of non-impairment for specific transport routes and building locations to override the FCC's national finding of impairment, SBC should be the one required to provide sufficient evidence consistent with the FCC's requirements to support a finding of non-impairment by the Commission with respect to each building location or transport route for which SBC asserts that the triggers or the potential deployment criteria are met.

Q8. HAS SBC MET THIS BURDEN IN THIS PROCEEDING?

A8. No. As Dr. Liu correctly points out in both her loops and transport testimony, SBC has not provided the necessary information required by the TRO to demonstrate that the provisions of the triggers have been met for most of the buildings and routes in its filing. Instead of identifying specific buildings and routes for which CLECs or other carriers actually acknowledge or otherwise can be documented as providing service at the relevant capacity levels, SBC took a much more "liberal" approach, relying upon assumptions and presumptions about what SBC believes are the potential capabilities of CLEC networks. The result is a vastly larger list of buildings and routes and one that is unsubstantiated in terms of meeting the FCC's trigger requirements.

Q9. PLEASE DESCRIBE WHAT YOU MEAN WHEN YOU SAY THAT SBC BASED ITS FILING UPON ASSUMPTIONS ABOUT THE POTENTIAL CAPABILITIES OF CLEC NETWORKS.

A9. SBC made several broad assumptions about the potential capabilities of CLEC networks, and used those assumptions as its primary evidence to support the triggers. For example, Section III of this testimony discusses the error of assuming that a transport route that traverses a CLEC switch (i.e., switched transport) can be counted as dedicated transport. This approach is an example of what I referred to in my direct testimony as SBC's "connect the dots" approach, in which any two collocations of a CLEC in SBC central offices are automatically assumed to be end points of a transport route. Similarly, Section IV of this testimony discusses SBC's assumption that any fiber optic facility should be counted as capable and operationally ready to provide any level of service, including DS1 and DS3.

Q10. DOES THE TRO SUPPORT A "SHOWING" OF NO IMPAIRMENT BASED UPON THESE SORT OF BROAD ASSUMPTIONS?

A10. No. The TRO provides only two alternatives for demonstrating lack of impairment: the true self-provisioning and wholesale triggers, and the potential deployment analysis. If SBC cannot demonstrate with respect to a particular route or enterprise customer location that the necessary numbers of CLECs or other carriers are providing the service at the requisite capacity levels, the only other recourse for SBC is to attempt to prove that the location or route meets the potential deployment test. The FCC's potential deployment test provides a more extensive set of requirements than the triggers, in that it requires both a validation that the location or route can accommodate multiple competitive supply, and an economic analysis to compare the potential revenues and costs of each building or route.

Q11. BASED UPON YOUR REVIEW OF THE CLECS' DATA RESPONSES, DO YOU AGREE WITH DR. LIU'S IMPLICATION AT PAGE 24 OF HER LOOPS TESTIMONY AND PAGE 40 OF HER TRANSPORT TESTIMONY THAT THE CLECS HAVE NOT BEEN FORTHCOMING IN PROVIDING DATA TO SBC WHEN ASKED?

A11. No. Based upon my review of the relevant data request responses provided in this case, there has been a significant amount of detailed network information provided by the CLECs. Further, a review of SBC's exhibits also shows that SBC received a significant amount of information from the CLECs (and other carriers). The problem in this case is not with CLEC data responses, it is that the data requested and collected by SBC does not support the buildings and routes proposed by SBC for non-impairment findings. SBC's failure to request the necessary data, and to accurately interpret the data received, should not be held against the CLECs.

It appears that SBC was simply attempting to develop the most extensive list of buildings and routes possible. SBC certainly had an adequate amount of information from the CLECs regarding high capacity loops to perform an analysis without relying upon third party sources or broad presumptions. For transport, SBC failed to ask CLECs specifically whether they were providing dedicated transport on specific, identified routes, and at what capacities; SBC instead chose to develop a listing of central office collocations, from which it developed an inflated list of potential routes based upon its connect-the-dots methodology. Essentially, SBC's discovery requests were premised on its construct that a CLEC collocation in two wire centers defines a dedicated transport route. CLECs should not be faulted for SBC's failure to ask the right questions. As noted below, in other jurisdictions where more appropriate data has been collected, SBC has designated a much more limited universe of building locations and transport routes.

Q12. WOULD CLECS HAVE AN INCENTIVE TO WITHHOLD INFORMATION FROM SBC IF THEY WERE PROVIDING SELF-PROVISIONED OR WHOLESALE SERVICES ON A ROUTE OR TO AN ENTERPRISE CUSTOMER LOCATION?

A12. No, one would expect the opposite to be true. It is important to recognize that there are actually two distinct categories of CLECs involved in this proceeding (either as intervenors or as subpoena recipients): those that own their own facilities on a particular route or at a particular location (the "facility owners"), and those that rely upon access to the facilities of SBC and other CLECs (the "facility lessees"). The facility owners have little need for unbundled network elements at these locations – because they already have their own facilities installed – and their interest in this proceeding with respect to those routes and locations may be minimal. The facility lessees, who depend upon the broad availability of unbundled network elements, have a much greater interest in this proceeding, as findings of non-impairment will directly impact their ability to provide service.

Q13. DR. LIU HAS SUGGESTED AT PAGE 24 OF HER LOOPS TESTIMONY THAT THE CLECS MAY BE MORE RESPONSIVE IF THE COMMISSION USED AS AN INCENTIVE THE THREAT OF DELISTING UNES FROM THOSE SBC IS OBLIGATED TO OFFER . DO YOU AGREE?

A13. No. The CLECs that would be harmed by such an approach would be the facilities lessees, who have little relevant information to provide regarding facilities deployment. In contrast, the facilities owners, who have the most information, may even benefit if their competitors no longer can use SBC-provided UNEs.

Q14. DOES THIS MEAN THAT FACILITIES OWNERS WILL NOT BE IMPACTED BY THE OUTCOME OF THIS PROCEEDING?

A14. No. Some of the facilities owners also lease a significant amount of loop and transport equivalent services from SBC to expand the reach of their networks. These carriers

certainly have an interest in making sure that they have access to UNEs where they do not have the capability of providing service, as well as ensuring that there is a workable transitional mechanism to allow them to convert to their own facilities where possible.

Q15. BY RECOMMENDING THAT THE COMMISSION MAKE A "PROVISIONAL FINDING" OF NON-IMPAIRMENT FOR 122 BUILDINGS, DR. LIU IS INDICATING THAT UNVALIDATED GORESULTS DATA CAN BE USED BY SBC AS EVIDENCE TO SHOW THAT THE TRIGGERS ARE MET FOR ENTERPRISE LOOPS. IS THIS APPROPRIATE?

A15. No. Even if CLECs are actually providing service into a building identified by GeoResults data, GeoResults does not have any information as to the nature, the capacity levels, or the operational readiness of the CLEC service. GeoResults would certainly be a good starting point for identifying CLECs who may be providing services, but the GeoResults information must be validated, and details about the nature of the services, either from the CLECs serving the building or from other independent sources, must be obtained.

Q16. HAVE OTHER AMERITECH STATES USED A DIFFERENT APPROACH THAN THAT USED BY SBC ILLINOIS TO COLLECTING DATA FROM CLECS?

A16. Yes. Ohio and Wisconsin both implemented a process in which the Commission staff sent a simple list of questions to the CLECs asking the locations and routes for which they provide loops and dedicated transport service. For these locations and routes, the CLECs were able to provide specific responses, and the result is a much more accurate and manageable record. As a result of this approach, SBC requested non-impairment findings for a significantly lower number of buildings and routes for Wisconsin and Ohio than it did for Illinois.

In Ohio, for example, SBC only claimed that 19 transport routes meet the self-provisioning trigger, and 28 routes meet the wholesale trigger, in contrast with the SBC Illinois' claims for 127 routes (self-provisioning) and 285 routes (wholesale), respectively. For Wisconsin, SBC only claimed that 19 routes meet the self-provisioning trigger and that 22 routes meet the wholesale trigger. While Illinois obviously has had more CLEC network deployment than these two states, a significant reason SBC provided a smaller list in Ohio and Wisconsin is likely that it was forced to rely upon the responses to the specific data requests which limited SBC's ability to create potential "triggered" locations or routes.

Q17. ON PAGE 24 OF HER LOOPS TESTIMONY, DR. LIU HAS MADE SEVERAL RECOMMENDATIONS THAT THE COMMISSION REQUIRE SBC AND THE OTHER PARTIES TO PROVIDE ADDITIONAL INFORMATION FOR PURPOSES OF MAKING THE DETERMINATIONS REQUESTED IN THIS PROCEEDING. WOULD IT BE APPROPRIATE FOR THE COMMISSION TO USE THE APPROACHES AND QUESTIONS USED IN OHIO AND WISCONSIN TO GATHERING THIS INFORMATION?

A17. Yes, if the Commission decides that the additional information requested by Dr. Liu should be collected, I would recommend that the Commission utilize the questions and implement a data collection process similar to that employed by the Wisconsin and Ohio commissions.

Q18. FOR ENTERPRISE LOOP POTENTIAL DEPLOYMENT, STAFF WITNESS DR. STARANCZAK PROPOSES THAT 100 BUILDINGS SHOULD QUALIFY FOR A POTENTIAL DEPLOYMENT FINDING UNLESS CLECS CAN PROVIDE A LOCATION-SPECIFIC REASON WHY A BUILDING DOES NOT MEET THE TEST. IS THIS APPROPRIATE?

A18. No. First, as I will explain in Section V of this testimony, this Staff proposal to essentially accept SBC's position on potential deployment with respect to 100 buildings is completely at odds with the FCC requirements. Second, the Staff's proposal to require

CLECs to provide information to show that the 100 buildings do not qualify for a non-impairment finding under potential deployment is an impossible task, especially given the timeframes in this case, and effectively shifts the burden of proof to the CLECs. Unlike SBC, which is already providing service into virtually all if not every building in its service territory, the CLECs will have little information as to what type of potential barriers may exist related to the 100 buildings. It could very well be that many of these 100 buildings may not even allow CLECs to place their facilities in the building unless they agree to some sort of revenue sharing arrangement, or that the buildings may not have space to accommodate competitive facilities. Unless CLECs have already attempted to enter the building and been rejected for some reason, it is unlikely that they will have access to such information, positive or negative, about a given building. Thus, the result of Staff's proposal would be that buildings for which there may be significant issues concerning CLEC access would be delisted due to the inability of the CLECs to obtain specific information about the buildings in the time frames available in this docket.

III. SWITCHED TRANSPORT CANNOT BE INCLUDED IN THE DEDICATED TRANSPORT TRIGGERS.

Q19. ON PAGE 49 OF HER TESTIMONY ON TRANSPORT TRIGGERS, DR. LIU ASSERTS THAT OTHER FORMS OF CLEC-PROVIDED TRANSPORT, INCLUDING SWITCHED TRANSPORT, SHOULD BE INCLUDED IN THE TRIGGER ANALYSES FOR DEDICATED TRANSPORT. DO YOU AGREE?

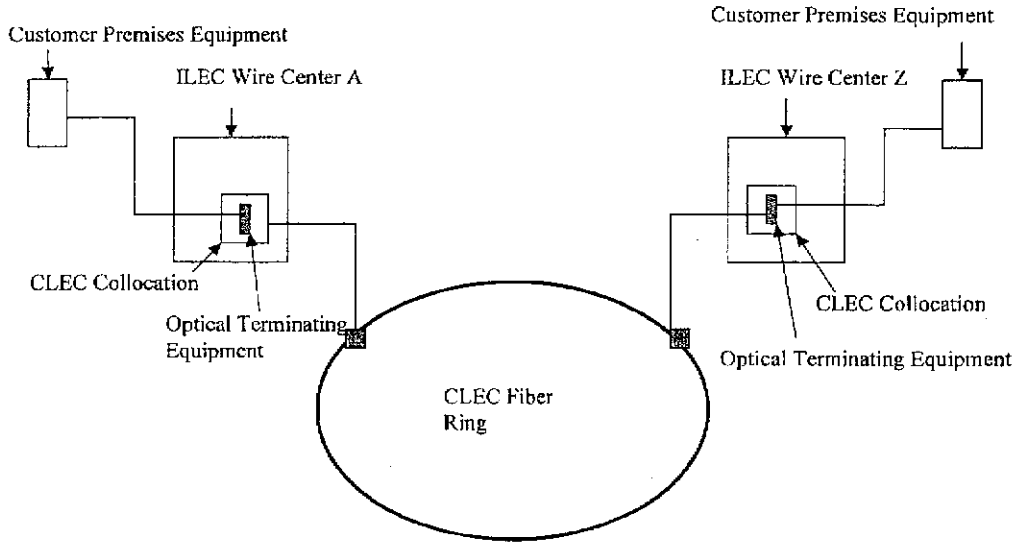
A19. No. The FCC provided a very specific definition of the type of CLEC transport to be included in this test: dedicated transport between two ILEC wire centers. Indeed, the FCC in the TRO *narrowed* the definition such that it no longer includes entrance facilities – transport from an ILEC wire center back to the CLEC's facilities. As Dr. Liu acknowledges in her testimony, the FCC does not include all CLEC-provided dedicated

transport; rather, it excludes any and all CLEC transport that does not provide a connection between ILEC wire centers.

Q20. IS IT POSSIBLE FOR ANY TYPE OF SWITCHED TRANSPORT ARRANGEMENT TO MEET THE DEFINITION OF DEDICATED TRANSPORT?

A20. Absolutely not. Dedicated transport, by definition, provides a fixed path between two points, in this case SBC wire centers. In paragraph 361 of the TRO, the FCC defines dedicated transport as "facilities dedicated to a particular customer or competitive carrier that it uses for transmission among incumbent LEC central offices and tandem offices." Diagram 1 below provides a depiction of a basic CLEC network configured to provide dedicated transport between ILEC wire centers.

Diagram 1
CLEC Dedicated Transport



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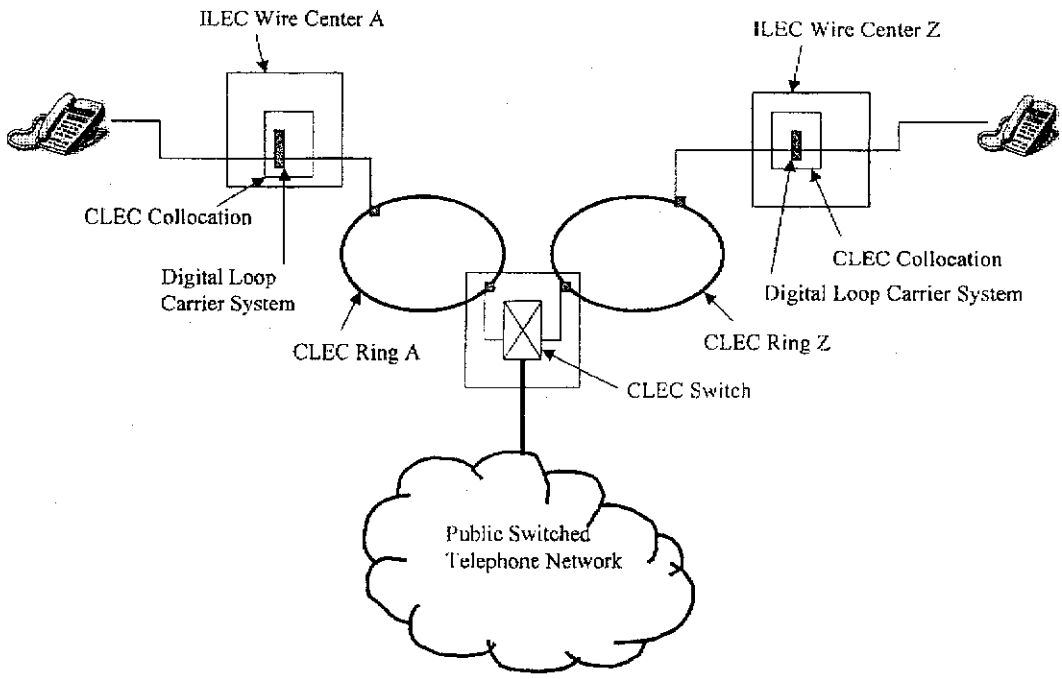
263 If a switch is present along the "transport route," the fixed path no longer exists, as traffic
264 can be routed to and from points outside of the fixed path by the switch, and traffic from
265 other customers and carriers will "share" the transport route. Diagram 2 below provides
266 a graphic description of a typical CLEC configuration in which two CLEC wire center
267 collocations are aggregated back to a switch.

Diagram 2
CLEC Switched Transport



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270 **Q21. IF "SWITCHED TRANSPORT" IS NOT DEDICATED TRANSPORT, HOW IS**
271 **IT PROPERLY CLASSIFIED FROM THE STANDPOINT OF NETWORK**
272 **FUNCTION?**

273 A21. Switched transport is the same as "shared" or "common" transport. These terms all have
274 the same meaning, and are used interchangeably when describing the functionality in
275 ILEC and CLEC networks of providing the capability of routing traffic *between multiple*
276 *points* via a switch. In every instance I have encountered, switched or shared transport is
277 treated as a completely separate and distinct service from dedicated transport. For
278 example, in SBC's access tariffs, switched transport and dedicated transport are different
279 offerings located in different sections of the tariff and which have different applications.

Q22. IN THE TRO, DOES THE FCC EVALUATE SWITCHED OR SHARED TRANSPORT SEPARATELY FROM DEDICATED TRANSPORT?

A22. Yes. In footnote 1100 of the TRO, the FCC states that "We refer generically to 'transport' in this Part as meaning dedicated transport. We address shared transport in Part VI.E. of this Order." Indeed, shared transport is treated separately under the rules adopted by the TRO. See 47 C.F.R. 51.319(d)(iii)(C). The FCC's inclusion of a separate section in the TRO to evaluate shared transport plainly means that it could not have intended for shared transport to be included as dedicated transport as well.

Q23. HAS THIS COMMISSION PREVIOUSLY REJECTED THE NOTION THAT DEDICATED TRANSPORT IS THE FUNCTIONAL EQUIVALENT OF SHARED TRANSPORT?

A23. Yes. In the Commission's February 17, 1998 Order in Docket Nos. 96-0486 & 96-0569 (Consolidated), in which it established UNE loop and other UNE rates for Ameritech, the Commission rejected Ameritech's proposal to require CLECs wishing to utilize the UNE-Platform to order dedicated transport between each and every Ameritech end office switch. The Commission based its decision upon the significant operational and economic differences between the two: "Moreover, the Commission finds that both of Ameritech's ULT (unbundled local transport) offerings suffer from several engineering and administration deficiencies. Rather than allowing for the shared use of existing capacity on in-place facilities, Ameritech is recommending that CLECs design, engineer and build what amount to parallel interoffice networks just to achieve interoffice connection needed to allow for ubiquitous organization and termination of their customers' traffic." The Commission continued: "The Commission further notes that Ameritech's transport proposals would amount to prohibitively expensive transport, making UNEs an undesireable entrant plan. A CLEC using Ameritech's version of

shared transport to provision the platform would effectively have to pay for dedicated transport from each Ameritech end office – 265 in Illinois – to provision its parallel network." (Id., page 106).

Q24. BASED UPON YOUR EXPERIENCE, IS IT LIKELY THAT MOST OF THE CLEC COLLOCATIONS LISTED BY SBC ARE BEING USED TO PROVIDE DEDICATED TRANSPORT, OR SWITCHED (OR SHARED) TRANSPORT, AS DEFINED IN THE TRO?

A24. I have no doubt that they are being used to provide switched or shared transport. The typical business plan for a CLEC that has entered the switched voice market is to establish collocation arrangements for the primary purpose of aggregating unbundled loops, and using transport facilities to connect the loop aggregation equipment to a switch that is located at another location. If the switch were located at the central office, as it is for SBC, the CLEC would not need any transport facilities back to the switch. This is why it is critical that information be collected from the CLECs (and other carriers) that would enable the Commission to exclude switched transport in its entirety from the trigger analysis.

Q25. DOES THE DEFINITION OF A TRANSPORT ROUTE IN THE TRO ALLOW FOR INCLUSION OF ROUTES FOR WHICH SERVICE IS NOT CURRENTLY BEING PROVIDED AS TRIGGERS?

A25. No. In paragraph 401 of the TRO, the FCC states: "Both triggers we adopt today evaluate transport on a route-specific basis. We define a route, for purposes of these tests, as a connection between wire center or switch "A" and wire center or switch "Z." Even if, on the incumbent LEC's network, a transport circuit from "A" to "Z" passes through an intermediate wire center "X," the competitive providers must offer service connecting wire centers "A" and "Z," but do not have to mirror the network path of the incumbent LEC through wire center "X."" The FCC went on to state that "[a] route-

specific test is sufficiently granular to avoid falsely identifying as competitive a route between two offices."

Q26. DO YOU AGREE WITH DR. LIU'S ASSERTION ON PAGE 29 OF HER TRANSPORT TESTIMONY THAT, TO THE EXTENT A CLEC HAS PROVISIONED TRANSPORT BACK TO ITS SWITCH FROM TWO WIRE CENTERS, THAT ROUTE MAY SATISFY THE REQUIREMENT OF OPERATIONAL READINESS FOR DEDICATED TRANSPORT BETWEEN THE TWO WIRE CENTERS?

A26. No. This is another instance in which Staff is looking at the potential capabilities of the CLEC's network instead of evidence of actual CLEC services. The assumption that any two CLEC collocations at ILEC wire centers should be assumed to be endpoints of a transport route is the primary basis for SBC's proposed route triggers.

IV. OC(N) LEVEL SERVICES CANNOT BE INCLUDED IN THE TRIGGERS.

Q27. IN BOTH HER LOOP AND TRANSPORT TRIGGER TESTIMONY, DR. LIU SUGGESTS THAT IT MAY BE APPROPRIATE TO DELIST LOCATIONS OR ROUTES FOR WHICH CLECS HAVE ONLY DEPLOYED OC(N) LEVEL CAPACITIES. DO YOU AGREE?

A27. No. The FCC's entire impairment analysis is based upon the assumption that CLECs receive enough revenue for locations where they have deployed OC(n) facilities to justify the costs of extending their networks. The FCC concluded that there was no impairment for OC(n) facilities, and CLECs can no longer access OC(n) facilities as UNEs. For DS3, DS1, and dark fiber services, the FCC's conclusion was completely different. The FCC determined that, collectively, DS3, DS1, and dark fiber loop and transport services need to be treated as a separate class of services because, unlike OC(n) services, the revenues associated with DS3s, DS1s, and dark fiber are *unlikely* to be sufficient to recover their costs. It would be entirely inconsistent to include a class of services for which a determination of non-impairment has already been reached, in this case OC(n) services,

for the impairment analysis of another class of services for which non-impairment is unlikely.

Q28. WHAT SHOWING DOES THE TRO REQUIRE AS TO THE CAPACITY LEVEL AT WHICH CLECS ARE PROVIDING SERVICE IN ORDER TO QUALIFY FOR THE TRIGGERS?

A28. The TRO requires a showing that the CLEC is *currently* providing service at the *relevant* capacity level. In Paragraph 329 of the TRO, the FCC, in introducing the loop triggers, states: "We establish two different types of triggers to identify the specific customer locations where there may be no impairment for the high-capacity loops we identify below and the incumbent LEC unbundling obligation can be eliminated at that customer location: 1) where a specific customer location is identified as *being currently served* by two or more unaffiliated competitive LECs with their own loop transmission facilities *at the relevant loop capacity level* (Self Provisioning Trigger); or 2) where two or more unaffiliated competitive providers have deployed transmission facilities to the location and are offering alternative loop facilities to competitive LECs on a wholesale basis *at the same capacity level* (Competitive Wholesale Facilities Trigger)."

Likewise, in introducing the wholesale transport trigger, paragraph 400 of the TRO provides: "Specifically, we find that competing carriers are not impaired where competing carriers have available two or more alternative transport providers, not affiliated with each other or the incumbent LEC, *immediately capable and willing to provide transport at a specific capacity* along a given route between incumbent LEC switches or wire centers. If a state commission finds no impairment *for a specific capacity level* of transport on a route, the incumbent LEC will no longer be required to

unbundle *that transport* along that route, according to the transition schedule adopted by the state commission." (emphasis added)

Q29. DOES THE TRO ANTICIPATE A RESULT WHERE IMPAIRMENT MAY BE FOUND FOR SOME CAPACITY LEVELS BUT NOT OTHERS ALONG THE SAME TRANSPORT ROUTE?

A29. Yes. In paragraph 407 of the TRO describing the self-provisioning transport trigger, the FCC states: "Furthermore, we note that where, through application of this trigger, impairment for unbundled transport *at a particular capacity* is no longer found, substantial competitive transport facilities, and perhaps other capacities of UNE transport will be available. Therefore, if this trigger removes unbundled *transport at a particular capacity level*, carriers will remain capable of serving end-user customers in all areas. This will provide certainty for new market entrants."

Q30. DR. LIU SUGGESTS THAT OC(N) SERVICES COULD BE USED IN THE TRIGGER ANALYSIS, BECAUSE THEY POTENTIALLY COULD BE DEMULTIPLEXED TO DERIVE A DS3 OR DS1 LEVEL SERVICE. IS THIS CONSISTENT WITH THE LANGUAGE FROM THE TRO YOU CITED ABOVE?

A30. No. Dr. Liu's suggestion would essentially allow all capacity levels for a location or route to be delisted if OC(n) facilities are present, which is clearly at odds with the TRO. If the FCC had intended the result contemplated by Dr. Liu, instead of developing capacity-specific tests, it would have simply declared no impairment for any capacity level wherever OC(n) level services exists. The FCC did the exact opposite in the TRO. It concluded that, on a national basis, CLECs are impaired without access to DS3 and DS1 level services. I also would point out that DS0 voice grade services can also be derived from an OC(n) loops, and certainly no one would suggest that a voice grade loop be removed as a UNE based upon the existence of an OC(n) facility.

Second, it is clear that the FCC intended for the triggers to be a snapshot of the services that CLECs are currently providing, and not a forward-looking analysis of the potential capabilities of the CLECs' networks. The FCC recognized this distinction in its development of the potential deployment analysis, which requires a full-blown demonstration of both customer demand and economic viability for locations to meet this test.

Q31. PLEASE EXPLAIN WHY DR. LIU'S OC(N) THEORY IS NOT CONSISTENT WITH THE RULES ADOPTED BY THE FCC IN THE TRO?

A31. SBC has identified facilities for which it believes CLECs *may be capable* of, but are not currently, providing service at the requisite capacity levels. Both the self-provisioning and wholesale triggers require, however, that for each capacity level a demonstration be made that "service is being offered" and that the carrier is "operationally ready to provide service." If a CLEC has not equipped its network to provide DS3 or DS1 capacity, it cannot meet either of those requirements. SBC could certainly attempt to demonstrate that CLECs with OC(n) level facilities meet the true potential deployment test, but it has not done so in this proceeding.

Q32. IS COST THE ONLY CONSIDERATION IN DETERMINING POTENTIAL DEPLOYMENT?

A32. No. There must also be a demonstrated demand for the services. The primary reason CLECs have not invested to demultiplex their traffic in most locations is that there has not been the requisite customer demand to make the investment worthwhile. In addition to the cost analysis required under potential deployment, a demonstration must be made that the location or route has enough demand to accommodate multiple competitive supply. It could very well be the case that, even if a CLEC has deployed OC(n) facilities,

there simply is not enough demand for individual DS1 or DS3 circuits at the location to warrant the extra investment to demultiplex the traffic. In such a case, CLECs would still be impaired under the FCC rules without access to the DS1 or DS3 UNEs.

V. BUILDING ACCESS AND LOOP ISSUES.

Q33. DR. LIU ASSERTS THAT SELF-PROVISIONERS NEED NOT HAVE ACCESS TO THE ENTIRE BUILDING IN ORDER FOR THAT BUILDING TO SATISFY THE SELF-PROVISIONING TRIGGER FOR LOOPS. DO YOU AGREE?

A33. No. While the terms "building" and "customer location" have been used somewhat interchangeably in the discussion of the triggers, the clear intent of the FCC's impairment tests is to identify locations where customers actually have the ability to be served by multiple providers. If a CLEC can only reach a single customer in a multi-tenant building, the other customers in that building are unable to be served by that CLEC unless the CLEC is able to reconfigure its network and gain access to the common house and riser cables into the building. The individual customer location within the building may be used for the triggers in that instance, but not the entire building.

Q34. DR. LIU STATES THAT, TO DEMONSTRATE THAT CLECS HAVE ACCESS TO THE ENTIRE BUILDING, IT NEED NOT BE SHOWN THAT THEY HAVE ACCESS TO THE SAME HOUSE AND RISER CABLE THAT SBC HAS ACCESS TO. DO YOU AGREE?

A34. As a purely theoretical matter, if the CLECs truly have access to the entire building through facilities other than those provided to SBC, then Dr. Liu is correct that CLECs would not be disadvantaged. However, as a practical matter, I am not aware of any situations where this type of arrangement exists (and Dr. Liu does not mention any), and to the extent SBC makes an assertion that an individual building has such an arrangement, that arrangement would need to be verified. For example, for any building that was constructed before the presence of competitive providers, there would have been

no reason to include alternative house and riser cable for carriers other than SBC, as there were no such carriers then in existence.

Q35. ON PAGE 30 OF HER TESTIMONY, DR. LIU DISAGREES WITH YOUR ASSERTION THAT COMPETITORS MUST BE ABLE TO ACCESS WHOLESALE LOOPS AT AN ILEC WIRE CENTER. WHY IS THIS A NECESSARY REQUIREMENT?

A35. A fundamental requirement for the wholesale triggers is that the service be widely available and on a nondiscriminatory basis. To access ILEC loops, CLECs have established wire center collocation arrangements because wire centers are the aggregation point for loops on the ILEC networks. If wholesale loops from another CLEC were not available at the wire center, then the CLECs would need to incur additional cost to extend their networks to wherever the wholesale loops were made available. In addition to placing an additional and unnecesary cost burden upon the CLECs, this type of arrangement would only be available to CLECs with the means to extend their networks to the wholesaler, meaning that the wholesale service does not meet either the requirement of being widely available or nondiscriminatory.

VI. STAFF'S POTENTIAL DEPLOYMENT PROPOSAL FOR LOOPS DOES NOT CURE THE FUNDAMENTAL FLAWS OF SBC'S APPROACH.

Q36. STAFF WITNESS DR. STARANCZAK PROPOSED THAT A MODIFIED VERSION OF SBC'S POTENTIAL DEPLOYMENT ANALYSIS FOR LOOPS BE ADOPTED. DO YOU AGREE WITH THIS PROPOSAL?

A36. No. As I described in my direct testimony, SBC's potential deployment analysis is not building or location-specific. Instead of analyzing each building and location for its individual demand, access, and cost characteristics, as required by the TRO, SBC's analysis simply groups a large number of buildings together, and assumes they are all identical. Staff's proposal merely adjusts two of the assumptions in SBC's analysis – the

annual revenue threshold and the number of adjacent CLEC networks – to narrow the number of buildings from 749 to 100. Further, Staff accepts SBC's assumption that any building located within 300 feet of alternative fiber facilities can be served by multiple competitors, without considering or requiring any analysis of the costs and difficulties associated with extending fiber facilities the necessary distance to each building. Thus, the Staff's approach is really not any more granular (and therefore not any more valid) than SBC's approach.

Q37. IS DR. STARANCZAK'S PROPOSAL ESSENTIALLY TO ADOPT THE SBC PROPOSAL FOR THESE 100 BUILDINGS AT ODDS WITH THE CONCLUSIONS OF STAFF WITNESS HANSEN?

A37. Yes. Mr. Hansen concluded that the underlying cost information provided by SBC is insufficient for the potential deployment test. Specifically, he rejects the TELRIC information provided as being incomplete by SBC's own admission, and rejects the Cambridge model as not reflecting the costs relevant to the buildings proposed. As the Staff has concluded that there is no relevant cost information that meets the FCC requirements for potential deployment, it is unclear how the Staff can suggest that any buildings meet the potential deployment test absent the filing of new, building-specific cost analyses by SBC. SBC acknowledges that at least 5 of the 9 FCC requirements require cost support, and therefore without sufficient cost information, it simply cannot satisfy the potential deployment test.

Q38. IS THE STAFF'S USE OF A BUILDING'S ANNUAL TELECOMMUNICATIONS SPENDING AN APPROPRIATE MEANS OF IDENTIFYING BUILDINGS THAT SHOULD BE DELISTED?

A38. No. As I explained in my direct testimony, a building's total annual revenue is not the best indicator of whether sufficient demand exists for DS3 or dark fiber services. A large

building with numerous customers could easily surpass Staff's $150,000 threshold without having sufficient demand for DS3 or dark fiber. A much better indicator would be for SBC to identify those buildings for which it is providing significant quantities of DS3 and dark fiber services, irrespective of the total telecommunications spending at the building.

Q39. IS THE $150,000 THRESHOLD RECOMMENDED BY SPRINT WITNESS GORDON A BY-PRODUCT OF THE CAMBRIDGE MODEL, WHICH STAFF WITNESS HANSEN HAS REJECTED?

A39. Yes. First, I certainly agree with Sprint witness Gordon's conclusion that SBC's assumption to use total building estimated revenues is inappropriate, and to the extent that a building-revenue threshold is adopted, it must be adjusted to reflect multiple, competitive supply. It must be remembered, however, that the $50,000 threshold that provides the basis of Sprint witness Gordon's recommendation is SBC's original proposal. As that proposal was based upon the Cambridge model, and the Staff has rejected the Cambridge model, it would make sense that any new proposal based upon the Cambridge model's outputs should also be rejected. To the extent that a revenue-based approach is adopted, the underlying assumption should also be adjusted to reflect the revenues for buildings that have a sufficient demand for DS3 and dark fiber services, which I believe will be a much smaller set of buildings.

Q40. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A40. Yes.